

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Subscriber)
Carrier Selection Changes)
Provisions of the Telecommunications)
Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of)
Consumers' Long Distance Carriers)

CC Docket No. 94-129

Texas Office of Public Utility Counsel's
Comments

Kristen Doyle
Assistant Public Counsel
Texas State Bar No. 00797225

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500
512/936-7520 (Facsimile)

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EXECUTIVE SUMMARY

Unauthorized carrier changes (“slamming”) is one of the most prevalent consumer abuses in the telecommunications industry, resulting in an unprecedented volume of complaints across the nation. The Texas Office of the Public Utility Counsel (TOPC) commends the FCC on proposed amendments to strengthen existing protection against slamming and offers the following comments to enhance consumer protection.

- (1) **Establish a 5-day deadline for executing carriers to complete carrier changes.**
Rather than requiring the executing carrier to duplicate the submitting carrier’s verification procedures, TOPC recommends that the FCC address anti-competitive issues by prescribing a 5-day deadline for carrier changes to be completed by incumbent local exchange carriers.
- (2) **Eliminate the “welcome package” verification option.**
- (3) **Apply verification rules to all carrier change requests, including customer-initiated “in bound” calls.**
- (4) **Instruct telecommunications utilities to educate their customers regarding preferred carrier freezes.**
TOPC proposes that the FCC develop rules directing telecommunications utilities to educate their customers regarding the protection against slamming afforded by customer-initiated PC freezes. Additionally, the FCC should allow companies to provide PC freeze order forms to their customers.
- (5) **Develop procedures and timelines regarding liability and remittance so that the customer will be made whole quickly, with the minimum amount of interaction between the customer and the unauthorized carrier as possible.**
- (6) **Stipulate that the unauthorized carrier reimburses the authorized carrier for the amount in controversy as a prerequisite to dispute resolution.**
Establishing a reimbursement prerequisite to dispute resolution avoids shifting the burdens caused by the slammer’s illegal acts to the consumer while the amount in controversy is resolved.
- (7) **Direct the telecommunications utility providing service to be named on the first page of each customer bill.**
Instead of providing information that will confuse the customer and create the false impression that she has been slammed, only the company that contracted with the customer to provide service should be named on the first page of each bill.

COMMENTS OF THE TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

I.

INTRODUCTION

Now comes the Texas Office of Public Utility Counsel (TOPC) and files these comments on the Further Notice of Proposed Rulemaking released by the Federal Communications Commission (FCC) on July 15, 1997, regarding the selection of telecommunications utilities.

TOPC commends the FCC on its proposed amendments to strengthen the effectiveness of its existing rules regarding unauthorized carrier changes, or “slamming.” Particularly, proposed requirements for in-bound carrier change request verification and the elimination of the negative-option “welcome package” verification procedure greatly increase protection for the customer against slamming.

Prevention of unauthorized carrier changes is fundamentally a consumer protection issue. TOPC, as the statutorily authorized agency charged with representing the interests of the residential and small business utility consumer in Texas, offers these comments in an effort to further enhance customer protection and customer understanding.

II.

COMMENTS ON THE FCC’S PROPOSED AMENDMENTS TO 47 C.F.R. §64.1100 *et seq.*

A. Application of the Verification Rules to All Telecommunications Carriers

The FCC seeks comments regarding the advisability of extending to executing carriers the verification procedures already applicable to submitting carriers. The increased time and expense associated with the executing carrier duplicating the efforts of the submitting carrier, while theoretically providing the highest level of protection against slamming, does not warrant the imposition of required verification procedures on the executing carrier.

However, the FCC has correctly identified a problem that is inherent when an incumbent local exchange carrier (ILEC) receives notice of a carrier change from a submitting carrier. Based upon the ILEC's unique dual position as both the executing carrier and a competitor, it is in the ILEC's interest to delay effectuating the carrier change for as long as possible, thus thwarting the customer's ability to freely and expeditiously change telecommunication carriers.

To address this problem, TOPC recommends that the FCC establish a deadline of five business days for the executing carrier to comply with the carrier change request once notified by the submitting carrier. Furthermore, TOPC suggests that any executing carrier that has not complied with the change request within the five-day deadline be deemed an unauthorized carrier subject to the administrative penalties contained in this Act.

B. Elimination of the "Welcome Package" Verification Option

TOPC wholly supports the FCC's conclusion that the "welcome package" verification option should be eliminated. This particular verification option does not provide an adequate level of consumer protection against slamming because it requires an affirmative action by the customer (e.g. mailing a postcard notice) to prevent a carrier change. While TOPC recognizes that every verification procedure requires some kind of affirmative action, the welcome package option is the only one that requires an affirmative action to **retain** the preferred carrier. Consequently, this option is particularly susceptible to abuse by deceptive carriers. For example, the unauthorized carrier may simply mail welcome packages indiscriminately and bury among promotional materials the post card that provides the customer the ability to retain its preferred carrier. Even if the customer makes a cursory review of the unsolicited materials, she is likely to overlook her only opportunity to prevent the unauthorized carrier change. The FCC's proposed elimination of the welcome package as a verification option abolishes an opportunity that exists under current FCC rules for unauthorized carriers to assert silent acquiescence as a defense to slamming.

C. Application of the Verification Rules to In-Bound Calls

The FCC has eliminated a major loophole existing under the current rules by its proposal to extend existing verification procedures to customer-initiated “in bound” calls. As the law currently exists, unscrupulous carriers, lacking any proof that verification procedures were undertaken to confirm a carrier change, have been able to claim that the change was made pursuant to an in-bound request. Absent evidence of extraordinary circumstances like hospitalization or travel out of the country, customers are then left unable to prove that the call that was never made to the unauthorized carrier was in fact, never made. Furthermore, without in-bound verification, any customer-initiated request for information or response to contest or sweepstakes advertisements is vulnerable to being used as the basis for an unauthorized carrier change.

TOPC lauds the FCC for greatly enhancing customer protection against slamming by properly placing the burden with the telecommunications carrier to prove that **every** carrier change is authorized.

D. Verification and Preferred Carrier Freezes

TOPC strongly supports the development and implementation of tools, like the preferred carrier (PC) freeze, that are designed to protect consumers against slamming. A PC freeze may be one of the customer’s strongest weapons against slamming because the freeze prevents an unauthorized change from ever occurring, rather than punishing the slammer only after the change is discovered.

The FCC has indicated initial concern that existing carriers may employ PC freezes in an anti-competitive manner. However, the anti-competitive effects prove to be minimal because a PC freeze does not limit in any way the ability of a competing carrier to provide information to the customer regarding its services, nor does it prevent the customer’s capacity to ultimately initiate a carrier change.

Balancing the overwhelming prophylactic benefit to the consumer with potentially minimal anti-competitive effects, the TOPC recommends that the FCC adopt the requirement that all existing carriers educate their customers by mail or advertisement regarding the customer’s right to request a PC freeze. Because it is not sufficient to simply provide information without the means to acquire significant customer protection,

TOPC further recommends that the existing carrier be permitted to provide its customers a response form that, once signed and returned to the carrier, will immediately effectuate a PC freeze. The signed form serves as evidence of the customer-initiated request, similar to a traditional LOA, thus eliminating the need for other verification procedures. Additionally, the signed form also addresses anti-competitive concerns two ways: 1.) It ensures that a PC freeze is always customer-initiated and 2.) It requires affirmative action on behalf of the customer before a freeze can be put in place.

E. Liability

1. Subscriber to Carrier

TOPC strongly supports the FCC's proposal granting customers the right to refuse to pay charges assessed by the unauthorized carrier to the unauthorized carrier. Customers should never be required to pay a company that has sabotaged the customer's ability to be served by their carrier of choice.

2. Carrier to Carrier

TOPC recommends that the FCC establish procedures for carrier to carrier liability in two difference scenarios that may arise after a customer has been slammed. In the first scenario, the customer discovers that she has been slammed before she has remitted any payment to the unauthorized carrier. In such a situation, the unauthorized carrier shall immediately, but no later than ten business days, forward the customer's records to the authorized carrier so that the authorized carrier may bill the customer according to the rate that she would have been charged if the unauthorized change had never occurred.

The second scenario arises when the customer discovers that she has been slammed after she has remitted payment to the unauthorized carrier. Upon notification to the unauthorized carrier of the slam, either by the customer or by the authorized carrier, the unauthorized carrier shall immediately, but no later than ten business days, forward the customer's records and all revenue collected by the unauthorized carrier to the authorized carrier. The authorized carrier shall then determine according to the customer's records what she would have been charged if the unauthorized change had never occurred. If the customer's payment remitted to the unauthorized carrier exceeds

the amount she would have been charged absent the unauthorized change, the authorized carrier shall provide the customer the alternative of receiving the overcharge either in the form of a check or as a credit to her future phone bill. The check or credit shall be tendered within one billing cycle after receipt of the customer's records.

TOPC suggests that the FCC adopt rules allowing the customer to seek remittance of any overcharge from the authorized carrier rather than from the unauthorized carrier for several reasons. Primarily, it is inappropriate to obligate the customer to negotiate with the unauthorized carrier for the amount and terms of a refund because the company has already demonstrated that it has no regard for customer rights. Clearly, the authorized carrier is the entity that has a vested interest in retaining the customer and thus will work to restore her to her original position. The unauthorized carrier, on the other hand, has no interest in retaining the customer but is motivated to keep as much of the customer's money as possible. Additionally, the authorized carrier is in the best position to determine the rate the customer would have been charged had the slam never occurred and to expeditiously credit her any discounts or volume rate that had been agreed upon in the original contract.

TOPC further recommends that the FCC adopt rules providing that the customer should not, under any circumstances, be required to pay a rate other than the one she had contracted to pay her authorized carrier. In addition, the customer should never be required to pay for any service (e.g. call waiting) that she had not originally contracted to receive from her authorized carrier, even if the unauthorized carrier provided her with additional services. Finally, the unauthorized carrier shall be liable to the authorized carrier for any usual and customary fees associated with returning the customer back to the authorized carrier.

3. Carrier to Subscriber Liability

The customer shall, in all instances, be made whole. To do this, all benefits (e.g. frequent flier miles) that the customer would have received from her authorized carrier incident to usage must be restored immediately, but not later than ten business days, after the discovery of the unauthorized carrier change. For the same reasons delineated above regarding overcharge credits, the customer should be allowed to look to her authorized carrier for restoration of her lost premiums.

4. Carrier to Carrier Dispute Resolution

The FCC seeks comment regarding its proposal for dispute resolution procedures when contention arises between the authorized and unauthorized carriers regarding the transfer of charges and the value of premiums. TOPC recommends that the rules include the stipulation that the unauthorized carrier reimburses the authorized carrier at the rate quoted by the authorized carrier as a prerequisite to dispute resolution. This is necessary so that the authorized carrier may make the customer whole as quickly as possible. It is axiomatic that the customer, as the blameless party, should not be the one to endure the delay in the return of her premiums while the carriers resolve their dispute. Of course, if at the conclusion of the dispute resolution process it is determined that the unauthorized carrier has been overcharged for the lost premiums, the authorized carrier shall remit the excess amount. For example, if the customer lost 200 frequent flier miles that the authorized carrier determines have a value of \$20.00, the unauthorized carrier must pay the authorized carrier \$20.00 (and the customer is credited 200 miles) as a prerequisite to requesting dispute resolution. If the parties eventually resolve that the value of the lost miles is \$15.00, then the authorized carrier will pay the unauthorized carrier \$5.00.

F. Evidentiary Standard Related to Lawfulness of a Resale Carrier's Change in Underlying Network Provider

The FCC seeks comments regarding the conditions that would require resale carriers to notify their subscribers when the underlying network provider has changed. TOPC suggests instead that the FCC adopt rules requiring the telecommunications utility providing service to be clearly named on the first page of each bill so that the customer may ensure that service is provided by her contracted company. This requirement provides the highest degree of consumer protection against slamming because the customer is able to easily verify each month that she is receiving services from the telecommunications utility she has contracted with to be her provider. Conversely, customer notification regarding a change in underlying carriers will only lead to confusion and create the false impression that the customer had been slammed.

G. §258 Working In Conjunction With State Laws

Slamming is one of the most significant consumer problems emerging from the increased competition in the telecommunications industry at both the national and statewide levels. As a result, the 75th Texas Legislature enacted legislation requiring the adoption of rules protecting consumers from unauthorized carrier changes by no later than November 1, 1997. These rules mirror the intent of the FCC rules, as well as delineating solutions for particular problems encountered by Texas consumers. TOPC urges the FCC to adopt rules that specifically recognize that telecommunications utilities must observe existing state rules regarding slamming as well as FCC rules. TOPC further requests that the FCC state that telecommunications utilities must comply with state rules in situations where state rules afford more protection to the consumer. By doing so, the FCC will secure the greatest degree of protection for the consumer.

Dated: September 15, 1997

Respectfully submitted,

Suzi Ray McClellan
Public Counsel
Texas State Bar No. 16607620

A handwritten signature in cursive script, reading "Kristen Doyle", is written over a horizontal line.

Kristen Doyle
Assistant Public Counsel
Texas State Bar No. 00797225

OFFICE OF PUBLIC UTILITY COUNSEL
P. O. Box 12397
Austin, Texas 78711-2397
512/936-7500
512/936-7520 (Facsimile)